

31A-2-101. General duties.

The Insurance Department shall administer the Insurance Code, seeking to achieve the purposes in Section 31A-1-102, and shall perform other duties imposed by law.

Enacted by Chapter 242, 1985 General Session

31A-2-102. Appointment, general powers, and duties of commissioner -- Vacancy -- Compensation of commissioner.

(1) The chief officer of the department is the insurance commissioner, who may exercise all powers given to, and shall perform all duties imposed on, the Insurance Department. He shall be appointed by the governor with the consent of the Senate. If the commissioner dies, resigns, or is removed, a successor may be appointed as specified in this subsection. If the Legislature is not then in session, the successor may serve as acting commissioner without consent until the Senate has an opportunity to consent to the successor. The commissioner is subject to removal at the pleasure of the governor.

(2) When the office of the commissioner is vacant, or when the commissioner is unable to perform the duties of the office, the governor shall fill the position as provided in Section 67-1-1.5.

(3) The governor shall establish the commissioner's salary within the salary range approved by the Legislature in Title 67, Chapter 22, State Officer Compensation.

Amended by Chapter 176, 2002 General Session

31A-2-103. Commissioner's appointees.

(1) The commissioner may appoint up to three persons to assist the commissioner. The commissioner may designate a person appointed under this section as a "deputy," "administrative assistant," "secretary," or any other title chosen by the commissioner.

(2) Persons appointed under this section are exempt from career service status under Section 67-19-15 and serve at the pleasure of the commissioner.

Amended by Chapter 128, 1994 General Session

31A-2-104. Other employees -- Insurance fraud investigators.

(1) The department shall employ a chief examiner and such other professional, technical, and clerical employees as necessary to carry out the duties of the department.

(2) An insurance fraud investigator employed pursuant to Subsection (1) may as approved by the commissioner:

(a) be designated a law enforcement officer, as defined in Section 53-13-103; and

(b) be eligible for retirement benefits under the Public Safety Employee's Retirement System.

Amended by Chapter 290, 2014 General Session
Amended by Chapter 300, 2014 General Session

31A-2-105. Constitutional oath.

Before entering upon the duties of his office, the commissioner shall take, subscribe, and file the constitutional oath. If the commissioner takes action in his office before complying with this section, in good faith and without knowledge of this requirement, and the validity of his action is then challenged, that person may take the oath after the action and the oath shall be given retroactive effect to the date on which he began his duties.

Amended by Chapter 305, 1993 General Session

31A-2-106. Ethical requirements for Insurance Department staff.

(1) No employee of the Insurance Department, including the commissioner, may:

(a) make any solicitation for any partisan political purpose or for anything that is not related to the public interest, as it is affected by insurance; or

(b) continue or initiate a monetary relationship, except as policyholder, with an insurance agency or brokerage firm, insurance service organization, insurance adjuster, insurer or person affiliated with an insurer, except that:

(i) a commissioner may receive renewal commissions or other deferred compensation earned before his appointment if this commission or compensation does not require him to personally perform further service;

(ii) a commissioner may continue to be obligated under the terms of a mortgage entered into prior to his appointment; and

(iii) a commissioner may continue to have the beneficial interest in or own stock in an insurer, noninsurance company with insurance subsidiaries, insurance agency, brokerage firm, or insurance service organization acquired before appointment if the commissioner's ownership or interest is not of such total value that the commissioner might receive a substantial monetary benefit by failing to act impartially towards the organization. A partnership interest shall be treated as if it were shares in a corporation.

(2) If the commissioner has any beneficial interest or ownership in an organization outlined under Subsection (1)(b)(iii), or if it is known to the commissioner that his spouse, parent, sibling, or child has an interest in any organization that, if held by the commissioner, would disqualify him from serving as commissioner, he shall disqualify himself from all actions respecting the particular organization. The commissioner shall then delegate a senior staff member who is not also disqualified to act in his place with regard to that organization. There is a rebuttable presumption that the commissioner or the delegate service staff member knows of any disqualifying holdings. The commissioner shall report a disqualification in each annual report to the governor as long as the disqualification continues.

(3) The commissioner shall give the governor at least 10 days written notice of any solicitation to be made by the commissioner or other member of the department staff.

(4) In addition to any other penalty, an employee violating this section may be removed from office.

Amended by Chapter 91, 1987 General Session

31A-2-108. Legal services.

(1) Except as provided in Subsection (4), the commissioner shall call upon the attorney general for the legal counsel and assistance necessary to enforce this title. Upon the commissioner's request, or upon the attorney general's own initiative, the attorney general may hire special legal counsel under Section 67-5-5 to represent the department.

(2) Upon the commissioner's request, or upon the commissioner's own initiative, the attorney general may aid in any investigation, hearing, or other procedure under this title and may institute, prosecute, and defend proceedings relating to the enforcement or interpretation of this title, including any proceeding to which the state, or the commissioner or any employee of the department in an official capacity, is a party or is interested.

(3) The commissioner may refer such evidence as is available concerning violations of this title or of any rule or order under this title to the proper county attorney or district attorney, who may, with or without this reference, institute the appropriate criminal proceedings.

(4) For proceedings authorized by Chapter 27a, Insurer Receivership Act, the commissioner may employ on a contract basis legal counsel other than the attorney general, with the fees, costs, and expenses of the counsel and the attorney general being a class one administrative expense under Section 31A-27a-701.

Amended by Chapter 309, 2007 General Session

31A-2-109. Outside consultants.

The department may employ outside consultants on a contract or part-time basis to perform any professional service needed by the department which cannot be performed by regular employees of the department.

Enacted by Chapter 242, 1985 General Session

31A-2-110. Official seal and signature.

(1) Any statutory or common-law requirement that an official seal be affixed is satisfied by the signature of the commissioner. However, the commissioner may adopt and use a seal bearing the words "Commissioner of Insurance for Utah," an impression of which shall be filed with the Division of Archives.

(2) Any signature of the commissioner may be in facsimile unless specifically required to be handwritten.

Amended by Chapter 204, 1986 General Session

31A-2-111. Delegation.

(1) Any power, duty, or function vested in the commissioner by law may be exercised, discharged, or performed by an employee of the Insurance Department acting in the commissioner's name and under his delegated authority.

(2) Any person whose own course of action depends in good faith upon proof of the validity of an alleged delegation is not obligated to act until shown a written delegation of the commissioner with the signature of the commissioner or deputy commissioner.

Enacted by Chapter 242, 1985 General Session

31A-2-112. Advisory councils and committees.

The commissioner may create advisory councils and committees to assist him. He may appoint members and provide by rule for the creation, governance, duties, and termination of any council or committee established.

Enacted by Chapter 242, 1985 General Session

31A-2-113. Supporting services.

(1) The Department of Administrative Services shall provide suitable offices for the Insurance Department:

- (a) in Salt Lake City; and
- (b) elsewhere, if approved by the governor as necessary for the efficient operation of the department.

(2) The commissioner shall, in accordance with the rules of the Department of Administrative Services or other applicable laws, procure or obtain access to all materials, supplies, and equipment necessary for the efficient operation of the Insurance Department, including reasonable library facilities and books.

Enacted by Chapter 242, 1985 General Session

31A-2-201. General duties and powers.

(1) The commissioner shall administer and enforce this title.

(2) The commissioner has all powers specifically granted, and all further powers that are reasonable and necessary to enable the commissioner to perform the duties imposed by this title.

(3) (a) The commissioner may make rules to implement the provisions of this title according to the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) In addition to the notice requirements of Section 63G-3-301, the commissioner shall provide notice under Section 31A-2-303 of hearings concerning insurance department rules.

(4) (a) The commissioner shall issue prohibitory, mandatory, and other orders as necessary to secure compliance with this title. An order by the commissioner is not effective unless the order:

- (i) is in writing; and
- (ii) is signed by the commissioner or under the commissioner's authority.

(b) On request of any person who would be affected by an order under Subsection (4)(a), the commissioner may issue a declaratory order to clarify the person's rights or duties.

(5) (a) The commissioner may hold informal adjudicative proceedings and public meetings, for the purpose of:

- (i) investigation;
- (ii) ascertainment of public sentiment; or
- (iii) informing the public.

(b) An effective rule or order may not result from informal hearings and meetings unless the requirement of a hearing under this section is satisfied.

(6) The commissioner shall inquire into violations of this title and may conduct any examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, that the commissioner considers proper to determine:

- (a) whether or not any person has violated any provision of this title; or
- (b) to secure information useful in the lawful administration of this title.

Amended by Chapter 68, 2010 General Session

31A-2-201.1. General filing requirements.

Except as otherwise provided in this title, the commissioner may set by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specific requirements for filing any of the following required by this title:

- (1) a form;
- (2) a rate; or
- (3) a report.

Amended by Chapter 382, 2008 General Session

31A-2-201.2. Evaluation of health insurance market.

- (1) Each year the commissioner shall:
 - (a) conduct an evaluation of the state's health insurance market;
 - (b) report the findings of the evaluation to the Health and Human Services Interim Committee before October 1 of each year; and
 - (c) publish the findings of the evaluation on the department website.
- (2) The evaluation required by this section shall:
 - (a) analyze the effectiveness of the insurance regulations and statutes in promoting a healthy, competitive health insurance market that meets the needs of the state, and includes an analysis of:
 - (i) the availability and marketing of individual and group products;
 - (ii) rate changes;
 - (iii) coverage and demographic changes;
 - (iv) benefit trends;
 - (v) market share changes; and
 - (vi) accessibility;
 - (b) assess complaint ratios and trends within the health insurance market, which

assessment shall include complaint data from the Office of Consumer Health Assistance within the department;

(c) contain recommendations for action to improve the overall effectiveness of the health insurance market, administrative rules, and statutes; and

(d) include claims loss ratio data for each health insurance company doing business in the state.

(3) When preparing the evaluation required by this section, the commissioner shall include a report of:

(a) the types of health benefit plans sold in the Health Insurance Exchange created in Section 63M-1-2504;

(b) the number of insurers participating in the defined contribution arrangement health benefit plans in the Health Insurance Exchange; and

(c) the number of employers and covered lives in the defined contribution arrangement market in the Health Insurance Exchange.

(4) When preparing the evaluation and report required by this section, the commissioner may seek the input of insurers, employers, insured persons, providers, and others with an interest in the health insurance market.

(5) The commissioner may adopt administrative rules for the purpose of collecting the data required by this section, taking into account the business confidentiality of the insurers.

(6) Records submitted to the commissioner under this section shall be maintained by the commissioner as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 319, 2013 General Session

31A-2-202. Reports and replies.

(1) When relevant, either directly or indirectly, to the performance of the commissioner's duties under this title, the commissioner may require from any person subject to regulation under this title:

(a) in whatever reasonable form and reasonable intervals the commissioner designates:

(i) a statement;

(ii) a report;

(iii) an answer to a questionnaire;

(iv) other information; and

(v) evidence of the information described in Subsections (1)(a)(i) through (iv);

(b) full explanation of the programming of any data storage or communication system in use;

(c) information from books, records, electronic data processing systems, computers, or any other information storage system be made available to the department:

(i) at any reasonable time; and

(ii) in any reasonable manner; and

(d) timely delivery to the National Association of Insurance Commissioners or other entity that gathers insurance industry information, a copy of the statistical data

prepared for and submitted to the department, as specified by the commissioner.

(2) (a) Subject to the requirements of this Subsection (2), the commissioner may:

- (i) prescribe forms for the information under Subsection (1); and
- (ii) specify who shall execute or certify the information under Subsection (1).

(b) The forms prescribed under this Subsection (2) shall be consistent, to the extent practicable, with those prescribed by other jurisdictions.

(c) The commissioner shall use the annual statement forms developed by the National Association of Insurance Commissioners for:

- (i) basic financial data; and
- (ii) market regulation analysis.

(3) (a) Subject to the requirements of this Subsection (3), the commissioner may prescribe reasonable minimum standards and techniques of accounting and data handling to ensure that timely and reliable information exists and can be made available.

(b) The standards and techniques prescribed under this Subsection (3) shall be consistent, to the extent practicable, with those prescribed by other states.

(4) (a) A person listed in Subsection (4)(b) shall reply promptly in writing or in other designated form to a reasonable written inquiry from the commissioner.

(b) This Subsection (4) applies to any person with executive authority over or in charge of any segment of the affairs of:

- (i) an insurer authorized to do or doing an insurance business in this state;
- (ii) the affiliate of an insurer authorized to do or doing an insurance business in this state; and
- (iii) any other person licensed under this title.

(5) The commissioner may:

- (a) require that any communication made under this section be verified; and
- (b) specify by whom a communication shall be verified.

(6) All information submitted to the commissioner shall be accurate and complete.

(7) In the absence of actual malice, no communication to the commissioner required by law or by the commissioner subjects the person making it to an action for damages for defamation.

Amended by Chapter 177, 2006 General Session

31A-2-203. Examinations and alternatives.

(1) (a) When the commissioner determines that information is needed about a matter related to the enforcement of this title, the commissioner may examine the affairs and condition of:

- (i) a licensee under this title;
- (ii) an applicant for a license under this title;
- (iii) a person or organization of persons doing or in process of organizing to do an insurance business in this state; or

- (iv) a person who is not, but is required to be, licensed under this title.

(b) When reasonably necessary for an examination under Subsection (1)(a), the

commissioner may examine:

(i) so far as it relates to the examinee, an account, record, document, or evidence of a transaction of:

(A) the insurer or other licensee;

(B) an officer or other person who has executive authority over or is in charge of any segment of the examinee's affairs; or

(C) an affiliate of the examinee; or

(ii) a third party model or product used by the examinee.

(c) (i) On demand, an examinee under Subsection (1)(a) shall make available to the commissioner for examination:

(A) the examinee's own account, record, file, document, or evidence of a transaction; and

(B) to the extent reasonably necessary for an examination, an account, record, file, document, or evidence of a transaction of a person described under Subsection (1)(b).

(ii) Except as provided in Subsection (1)(c)(iii), failure to make an item described in Subsection (1)(c)(i) available is concealment of records under Subsection 31A-27a-207(1)(e).

(iii) If an examinee is unable to obtain an account, record, file, document, or evidence of a transaction from a person described under Subsection (1)(b), that failure is not concealment of records if the examinee immediately terminates the relationship with the other person.

(d) (i) The commissioner or an examiner may not remove an account, record, file, document, evidence of a transaction, or other property of an examinee from the examinee's offices unless:

(A) the examinee consents in writing; or

(B) a court grants permission.

(ii) The commissioner may make and remove a copy or abstract of the following described in Subsection (1)(d)(i):

(A) an account;

(B) a record;

(C) a file;

(D) a document;

(E) evidence of a transaction; or

(F) other property.

(2) (a) Subject to the other provisions of this section, the commissioner shall examine as needed and as otherwise provided by law:

(i) every insurer, both domestic and nondomestic;

(ii) every licensed rate service organization; and

(iii) any other licensee.

(b) The commissioner shall examine an insurer, both domestic and nondomestic, no less frequently than once every five years, but the commissioner may use in lieu an examination under Subsection (4) to satisfy this requirement.

(c) The commissioner shall revoke the certificate of authority of an insurer or the license of a rate service organization that has not been examined, or submitted an acceptable in lieu report under Subsection (4), within the past five years.

(d) (i) Any 25 persons who are policyholders, shareholders, or creditors of a domestic insurer may by verified petition demand a hearing under Section 31A-2-301 to determine whether the commissioner should conduct an unscheduled examination of the insurer.

(ii) Persons demanding the hearing under this Subsection (2)(d) shall be given an opportunity in the hearing to present evidence that an examination of the insurer is necessary.

(iii) If the evidence justifies an examination, the commissioner shall order an examination.

(e) (i) If the board of directors of a domestic insurer requests that the commissioner examine the insurer, the commissioner shall examine the insurer as soon as reasonably possible.

(ii) If the examination requested under this Subsection (2)(e) is conducted within two years after completion of a comprehensive examination by the commissioner, costs of the requested examination may not be deducted from premium taxes under Section 59-9-102 unless the commissioner's order specifically provides for the deduction.

(f) A bail bond surety company, as defined in Section 31A-35-102, is exempt from:

(i) the five-year examination requirement in Subsection (2)(b);

(ii) the revocation under Subsection (2)(c); and

(iii) Subsections (2)(d) and (2)(e).

(3) (a) The commissioner may order an independent audit or examination by one or more technical experts, including a certified public accountant or actuary:

(i) in lieu of all or part of an examination under Subsection (1) or (2); or

(ii) in addition to an examination under Subsection (1) or (2).

(b) An audit or evaluation under this Subsection (3) is subject to Subsection (5), Section 31A-2-204, and Subsection 31A-2-205(4).

(4) (a) In lieu of all or a part of an examination under this section, the commissioner may accept the report of an examination made by:

(i) the insurance department of another state; or

(ii) another government agency in:

(A) this state;

(B) the federal government; or

(C) another state.

(b) An examination by the commissioner under Subsection (1) or (2) or accepted by the commissioner under this Subsection (4) may use:

(i) an audit completed by a certified public accountant; or

(ii) an actuarial evaluation made by an actuary approved by the commissioner.

(5) (a) An examination may be comprehensive or limited with respect to the examinee's affairs and condition. The commissioner shall determine the nature and scope of an examination, taking into account all relevant factors, including:

(i) the length of time the examinee has been licensed in this state;

(ii) the nature of the business being examined;

(iii) the nature of the accounting or other records available;

(iv) one or more reports from:

(A) independent auditors; and

- (B) self-certification entities; and
- (v) the nature of examinations performed elsewhere.
- (b) The examination of an alien insurer is limited to one or more insurance transactions and assets in the United States, unless the commissioner orders otherwise after finding that extraordinary circumstances necessitate a broader examination.
- (6) To effectively administer this section, the commissioner:
 - (a) shall:
 - (i) maintain one or more effective financial condition and market regulation surveillance systems including:
 - (A) financial and market analysis; and
 - (B) a review of insurance regulatory information system reports;
 - (ii) employ a priority scheduling method that focuses on insurers and other licensees most in need of examination; and
 - (iii) use examination management techniques similar to those outlined in the Financial Condition Examination Handbook of the National Association of Insurance Commissioners; and
 - (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may make rules pertaining to:
 - (i) a financial condition and market regulation surveillance system; and
 - (ii) annual financial reporting requirements similar to those outlined in the Annual Financial Reporting Model Regulation of the National Association of Insurance Commissioners.

Amended by Chapter 349, 2009 General Session

31A-2-203.5. Procedures -- Adjudicative proceedings.

The commissioner of insurance shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

31A-2-204. Conducting examinations.

- (1) (a) For each examination under Section 31A-2-203, the commissioner shall issue an order:
 - (i) stating the scope of the examination; and
 - (ii) designating the examiner in charge.
- (b) The commissioner need not give advance notice of an examination to an examinee.
- (c) The examiner in charge shall give the examinee a copy of the order issued under this Subsection (1).
- (d) (i) The commissioner may alter the scope or nature of an examination at any time without advance notice to the examinee.
- (ii) If the commissioner amends an order described in this Subsection (1), the commissioner shall provide a copy of any amended order to the examinee.
- (e) Statements in the commissioner's examination order concerning examination

scope are for the examiner's guidance only.

(f) Examining relevant matters not mentioned in an order issued under this Subsection (1) is not a violation of this title.

(2) The commissioner shall, whenever practicable, cooperate with the insurance regulators of other states by conducting joint examinations of:

- (a) multistate insurers doing business in this state; or
- (b) other multistate licensees doing business in this state.

(3) An examiner authorized by the commissioner shall, when necessary to the purposes of the examination, have access at all reasonable hours to the premises and to any books, records, files, securities, documents, or property of:

- (a) the examinee; and
- (b) any of the following if the premises, books, records, files, securities, documents, or property relate to the affairs of the examinee:

- (i) an officer of the examinee;
- (ii) any other person who:
 - (A) has executive authority over the examinee; or
 - (B) is in charge of any segment of the examinee's affairs; or
- (iii) any affiliate of the examinee under Subsection 31A-2-203(1)(b).

(4) (a) The officers, employees, and agents of the examinee and of persons under Subsection 31A-2-203(1)(b) shall comply with every reasonable request of the examiners for assistance in any matter relating to the examination.

(b) A person may not obstruct or interfere with the examination except by legal process.

(5) If the commissioner finds the accounts or records to be inadequate for proper examination of the condition and affairs of the examinee or improperly kept or posted, the commissioner may employ experts to rewrite, post, or balance the accounts or records at the expense of the examinee.

(6) (a) The examiner in charge of an examination shall make a report of the examination no later than 60 days after the completion of the examination that shall include:

- (i) the information and analysis ordered under Subsection (1); and
- (ii) the examiner's recommendations.

(b) At the option of the examiner in charge, preparation of the report may include conferences with the examinee or representatives of the examinee.

(c) The report is confidential until the report becomes a public document under Subsection (7), except the commissioner may use information from the report as a basis for action under Chapter 27a, Insurer Receivership Act.

(7) (a) The commissioner shall serve a copy of the examination report described in Subsection (6) upon the examinee.

(b) Within 20 days after service, the examinee shall:

- (i) accept the examination report as written; or
- (ii) request agency action to modify the examination report.

(c) The report is considered accepted under this Subsection (7) if the examinee does not file a request for agency action to modify the report within 20 days after service of the report.

(d) If the examination report is accepted:

- (i) the examination report immediately becomes a public document; and
- (ii) the commissioner shall distribute the examination report to all jurisdictions in which the examinee is authorized to do business.

(e) (i) Any adjudicative proceeding held as a result of the examinee's request for agency action shall, upon the examinee's demand, be closed to the public, except that the commissioner need not exclude any participating examiner from this closed hearing.

(ii) Within 20 days after the hearing held under this Subsection (7)(e), the commissioner shall:

- (A) adopt the examination report with any necessary modifications; and

- (B) serve a copy of the adopted report upon the examinee.

(iii) Unless the examinee seeks judicial relief, the adopted examination report:

- (A) shall become a public document 10 days after service; and

- (B) may be distributed as described in this section.

(f) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, to the extent that this section is in conflict with Title 63G, Chapter 4, Administrative Procedures Act, this section governs:

- (i) a request for agency action under this section; or

- (ii) adjudicative proceeding under this section.

(8) The examinee shall promptly furnish copies of the adopted examination report described in Subsection (7) to each member of the examinee's board.

(9) After an examination report becomes a public document under Subsection (7), the commissioner may furnish, without cost or at a reasonable price set under Section 31A-3-103, a copy of the examination report to interested persons, including:

- (a) a member of the board of the examinee; or

- (b) one or more newspapers in this state.

(10) (a) In a proceeding by or against the examinee, or any officer or agent of the examinee, the examination report as adopted by the commissioner is admissible as evidence of the facts stated in the report.

(b) In any proceeding commenced under Chapter 27a, Insurer Receivership Act, the examination report, whether adopted by the commissioner or not, is admissible as evidence of the facts stated in the examination report.

Amended by Chapter 382, 2008 General Session

31A-2-205. Examination costs.

(1) (a) Except as provided in Subsection (3), an examinee that is one of the following shall reimburse the department for the reasonable costs of examinations made under Sections 31A-2-203 and 31A-2-204:

- (i) an insurer;

- (ii) a rate service organization;

- (iii) a subsidiary of an insurer or rate service organization; or

- (iv) a life settlement provider.

(b) The following costs shall be reimbursed under this Subsection (1):

- (i) actual travel expenses;

- (ii) reasonable living expense allowance;

- (iii) compensation at reasonable rates for all professionals reasonably employed

for the examination under Subsection (4);

(iv) the administration and supervisory expense of:

(A) the department; and

(B) the attorney general's office; and

(v) an amount necessary to cover fringe benefits authorized by the commissioner or provided by law.

(c) In determining rates, the commissioner shall consider the rates recommended and outlined in the examination manual sponsored by the National Association of Insurance Commissioners.

(d) This Subsection (1) applies to a surplus lines producer to the extent that the examinations are of the surplus line producer's surplus lines business.

(2) An insurer requesting the examination of one of its producers shall pay the cost of the examination. Otherwise, the department shall pay the cost of examining a licensee other than those specified under Subsection (1).

(3) (a) On the examinee's request or at the commissioner's discretion, the department may pay all or part of the costs of an examination whenever the commissioner finds that because of the frequency of examinations or the financial condition of the examinee, imposition of the costs would place an unreasonable burden on the examinee.

(b) The commissioner shall include in the commissioner's annual report information about any instance in which the commissioner has applied this Subsection (3).

(4) (a) A technical expert employed under Subsection 31A-2-203(3) shall present to the commissioner a statement of all expenses incurred by the technical expert in conjunction with an examination.

(b) The examined insurer shall, at the commissioner's direction, pay to a technical expert:

(i) (A) actual travel expenses;

(B) reasonable living expenses; and

(C) compensation; and

(ii) for expenses necessarily incurred as approved by the commissioner.

(c) The examined insurer shall reimburse the department for:

(i) a department examiner's:

(A) actual travel expenses; and

(B) reasonable living expenses; and

(ii) the compensation of department examiners involved in the examination.

(d) (i) The examined insurer shall certify the consolidated account of all charges and expenses for the examination.

(ii) The examined insurer shall:

(A) retain a copy of the consolidated account; and

(B) file a copy of the consolidated account with the department as a public record.

(e) An annual report of examination charges paid by examined insurers directly to persons employed under Subsection 31A-2-203(3) or to department examiners shall be included with the department's budget request.

(f) Amounts paid directly by examined insurers to persons employed under

Subsection 31A-2-203(3) or to department examiners may not be deducted from the department's appropriation.

(5) (a) The amount payable under Subsection (1) is due 10 days after the day on which the examinee is served with a detailed account of the costs.

(b) Payments received by the department under this Subsection (5) shall be handled as provided by Section 31A-3-101.

(6) (a) The commissioner may require an examinee under Subsection (1), or an insurer requesting an examination under Subsection (2), either before or during an examination, to make deposits with the state treasurer to pay the costs of examination.

(b) Any deposit made under this Subsection (6) shall be held in trust by the state treasurer until applied to pay the department the costs payable under this section.

(c) If a deposit made under this Subsection (6) exceeds examination costs, the state treasurer shall refund the surplus.

(7) A domestic insurer may offset the examination expenses paid under this section against premium taxes under Subsection 59-9-102(2).

Amended by Chapter 355, 2009 General Session

31A-2-206. Receipt and handling of deposits.

(1) As used in this chapter:

(a) "Custodian institution" means a financial institution in this state as defined under Section 7-1-103 that:

(i) has authority under Title 7, Chapter 5, Trust Business, to engage in a trust business; and

(ii) is approved by the commissioner to have custody of deposited securities, whether physically, through the Federal Reserve book-entry system, or through a clearing corporation as defined under Subsection 70A-8-101(1).

(b) "Federal Reserve book-entry system" means the computerized system sponsored by the United States Department of the Treasury and certain other agencies and instrumentalities of the United States for holding and transferring securities of the United States government and other agencies and instrumentalities.

(2) Subject to the commissioner's approval and to the requirements of this section, the state treasurer shall accept, and a custodian institution qualified under Subsection (1)(a) may accept:

(a) deposits required or permitted under this title or rules adopted under this title;

(b) deposits of domestic insurers or of alien insurers domiciled in this state if required by the laws of other states as a prerequisite to authority to do an insurance business in other states; and

(c) deposits resulting from application of any retaliatory provisions of this title.

(3) Deposits authorized under Subsection (2) shall be of securities described in Subsection (7).

(4) Unless otherwise provided by the law requiring or permitting the deposit, each deposit shall be held in trust:

(a) first, for administrative costs under Subsection 31A-27a-701(2)(a);

(b) second, for the claimants under Subsection 31A-27a-701(2)(c);

(c) third, for the claimants under Subsection 31A-27a-701(2)(d); and

(d) fourth, for all other creditors in the order of priority established under Section 31A-27a-701.

(5) A claim may be made against the deposit of an alien insurer only if it arises out of a transaction in the United States.

(6) Deposits may be made by:

(a) delivering physical custody and control of the deposited security to the state treasurer or a custodian institution, accompanied by a statement signed by the depositor indicating that the deposit shall be held in trust under the terms of this section and subject to the commissioner's exclusive direction until control is released by the commissioner; or

(b) delivering to the commissioner, on a form adopted by rule, a signed certificate of a custodian institution, describing securities qualifying for deposit under Subsection (7) that are on deposit with a clearing corporation or held in the Federal Reserve book-entry system in the name of the custodian institution, in trust for the purposes stated under this section, and that these securities are subject to the exclusive direction of the commissioner and may not be withdrawn or transferred by any person, including the insurer owning the securities, without the commissioner's written approval.

(7) (a) Deposits may consist of any securities authorized in Subsection (7)(b) for which there is a ready market if they:

(i) are expressly approved by the commissioner;

(ii) are subject to disposition by the state treasurer or custodian institution only with the concurrence of the commissioner; and

(iii) are not available to any other person except as expressly provided by law.

(b) The authorized securities are:

(i) deposits or certificates of deposit insured by the Federal Deposit Insurance Corporation;

(ii) bonds or other evidences of indebtedness that are guaranteed as to principal and interest by the United States;

(iii) tax anticipation bonds or notes, general obligation bonds, or revenue bonds of this state or of any county, incorporated city or town, school district, or other political subdivision of this state, if the bonds or notes are rated AAA by Standard and Poor's or an equivalent nationally recognized rating agency;

(iv) bonds or other evidences of indebtedness issued or guaranteed by an agency or instrumentality of the United States; and

(v) any other security approved by the commissioner that the commissioner considers an equivalent grade investment to those enumerated under Subsections (7)(b)(i) through (iv) based on tests of the safety of principal and liquidity.

(8) Securities held on deposit shall be valued under Section 31A-17-401 as those investments are valued for life insurers, or at market, whichever is lower. The securities shall be revalued whenever the commissioner requests to ensure continued compliance with the requirements of this title.

(9) (a) The state treasurer or custodian institution shall:

(i) deliver to the depositor a receipt for all securities deposited or held;

(ii) issue a duplicate copy of the receipt to the commissioner; and

(iii) permit the depositor to inspect its physically held securities at any

reasonable time.

(b) On application of the depositor or when required by the law of any state or country or by the order of any court of competent jurisdiction, the state treasurer or custodian institution shall certify that the deposit was made and what is on deposit.

(c) Depositors, the state treasurer, any custodian institution, and the commissioner shall each keep a permanent record of securities deposited or held under this section and of any substitutions or withdrawals. They shall compare records at least annually.

(10) A transfer of a deposited security, whether voluntary or by operation of law, is valid only if approved in writing by the commissioner and countersigned by the state treasurer or custodian institution.

(11) Neither a judgment creditor nor other person may levy upon any deposit held under this section.

(12) A depositor that has complied with all provisions of this title intended to preserve its financial solidity is, while solvent and complying with the laws of this state, entitled to:

(a) receive interest and cash dividends accruing on the securities held for its account; and

(b) substitute for deposited securities other eligible securities, as expressly approved by the commissioner.

(13) Within 45 days after the commissioner gives notice to a depositor that a deposit is not an acceptable deposit under Subsection (7), the depositor shall substitute other eligible securities expressly approved by the commissioner and allowed under Subsection (7).

(14) A depositor may voluntarily deposit or transfer control of eligible securities in excess of requirements to absorb fluctuations in value and to facilitate substitution of securities.

(15) Upon the depositor's request and upon approval of the commissioner, any deposit or part of a deposit shall be released to, or on order of, the depositor to the extent not needed to satisfy requirements of this title. On the order of a court of competent jurisdiction, the deposit or appropriate part of the deposit shall be released to the person for whom it is held.

(16) Each depositor shall pay the cost of custody of securities by a custodian institution or by the state treasurer.

(17) The commissioner shall adopt rules to implement this section.

Amended by Chapter 309, 2007 General Session

31A-2-207. Commissioner's records and reports -- Protection from disclosure of certain records.

(1) The commissioner shall maintain all department records that are:

(a) required by law;

(b) necessary for the effective operation of the department; or

(c) necessary to maintain a full record of department activities.

(2) The records of the department may be preserved, managed, stored, and made available for review consistent with:

- (a) another Utah statute;
 - (b) the rules made under Section 63A-12-104;
 - (c) the decisions of the State Records Committee made under Title 63G, Chapter 2, Government Records Access and Management Act; or
 - (d) the needs of the public.
- (3) A department record may not be destroyed, damaged, or disposed of without:
- (a) authorization of the commissioner; and
 - (b) compliance with all other applicable laws.
- (4) The commissioner shall maintain a permanent record of the commissioner's proceedings and important activities, including:
- (a) a concise statement of the condition of each insurer examined by the commissioner; and
 - (b) a record of all certificates of authority and licenses issued by the commissioner.
- (5) (a) Prior to October 1 of each year, the commissioner shall prepare an annual report to the governor which shall include, for the preceding calendar year, the information concerning the department and the insurance industry which the commissioner believes will be useful to the governor and the public.
- (b) The report required by this Subsection (5) shall include the information required under Chapter 27a, Insurer Receivership Act, and Subsections 31A-2-106(2), 31A-2-205(3), and 31A-2-208(3).
- (c) The commissioner shall make the report required by this Subsection (5) available to the public and industry in electronic format.
- (6) All department records and reports are open to public inspection unless specifically provided otherwise by statute or by Title 63G, Chapter 2, Government Records Access and Management Act.
- (7) On request, the commissioner shall provide to any person certified or uncertified copies of any record in the department that is open to public inspection.
- (8) Notwithstanding Subsection (6) and Title 63G, Chapter 2, Government Records Access and Management Act, the commissioner shall protect from disclosure any record, as defined in Section 63G-2-103, or other document received from an insurance regulator of another jurisdiction:
- (a) at least to the same extent the record or document is protected from disclosure under the laws applicable to the insurance regulator providing the record or document; or
 - (b) under the same terms and conditions of confidentiality as the National Association of Insurance Commissioners requires as a condition of participating in any of the National Association of Insurance Commissioners' programs.

Amended by Chapter 382, 2008 General Session

31A-2-208. Publications.

- (1) The commissioner may prepare and distribute books, pamphlets, and other publications relating to insurance. Except as otherwise provided under this title, the commissioner may charge the cost of producing a publication to those desiring to

receive the publication. Money collected from subscription fees charged for a publication shall be deposited into the Relative Value Study Restricted Account, created in Section 59-9-105, to be used as provided in Section 59-9-105.

(2) The commissioner shall have the annual report required in Subsection 31A-2-207(5) printed:

- (a) in a form determined by the commissioner; and
- (b) in sufficient numbers to meet requests for copies.

(3) The commissioner shall publish in the annual report required in Subsection 31A-2-207(5) an up-to-date chart and explanation of the organization of the commissioner's office, making clear the allocation of responsibility and authority among the staff. This up-to-date chart and explanation shall be printed in sufficient numbers to meet requests for copies.

Amended by Chapter 284, 2011 General Session

31A-2-208.5. Comparison tables.

(1) (a) The commissioner shall annually publish a table comparing the rates charged by insurers for private passenger motor vehicle and homeowners insurance in this state.

(b) The comparison shall list the top 20 insurers writing the greatest volume by premium dollar per calendar year and others requesting inclusion in the comparison.

(c) The commissioner shall develop at least four hypothetical examples of risk in preparing the comparison.

(2) In conjunction with the rate comparison described in Subsection (1), the commissioner shall publish:

(a) a table listing, for each insurer compared, the ratio of justified and questionable complaints received by the department to the premium dollar amount written by the insurer; and

(b) a table listing for each insurer the combined loss and expense ratio for the most current year available.

(3) The department shall make copies of the tables available to the public at minimal or no cost.

Enacted by Chapter 129, 1990 General Session

31A-2-209. Access to state records.

Subject to Title 63G, Chapter 2, Government Records Access and Management Act, the commissioner shall have access to the records of any agency of the state government or of any political subdivision of the state which the commissioner may consult in discharging the commissioner's duties.

Amended by Chapter 382, 2008 General Session

31A-2-210. Participation in organizations.

The commissioner and the Insurance Department shall maintain close relations with the commissioners of other states and shall participate in the activities and affairs

of the National Association of Insurance Commissioners and other organizations to the extent, in the commissioner's judgment, these activities will promote the purposes of the Insurance Code. The actual and necessary expenses incurred by this participation shall be paid out of the Insurance Department appropriation. The commissioner may not make any commitments that are not terminable on reasonable notice by the commissioner.

Enacted by Chapter 242, 1985 General Session

31A-2-211. Rules and forms during transition period.

(1) The commissioner's rules adopted under former Title 31 are rescinded unless continued under Subsection (3).

(2) Between May 1, 1985, and July 1, 1986, the commissioner may prepare and adopt rules to implement or supplement provisions under Title 31A. These rules are effective on July 1, 1986, or on the effective date of the particular provision, if that is later than July 1, 1986.

(3) The commissioner may issue orders declaring that all or part of a rule in effect under former Title 31 remains in effect until a date specified under the order, which date may not be later than June 30, 1989. No rule continued under this subsection may be inconsistent with other provisions under Title 31A. Notice of the order shall be given under Section 31A-2-303.

(4) Every form used, issued, or required by the Insurance Department and approved by the commissioner or otherwise legitimately in use immediately prior to the effective date of this title may continue to be used until replaced in accordance with the provisions of this title.

Amended by Chapter 161, 1987 General Session

31A-2-212. Miscellaneous duties.

(1) Upon issuance of an order limiting, suspending, or revoking a person's authority to do business in Utah, and when the commissioner begins a proceeding against an insurer under Chapter 27a, Insurer Receivership Act, the commissioner:

(a) shall notify by mail the producers of the person or insurer of whom the commissioner has record; and

(b) may publish notice of the order or proceeding in any manner the commissioner considers necessary to protect the rights of the public.

(2) When required for evidence in a legal proceeding, the commissioner shall furnish a certificate of authority of a licensee to transact the business of insurance in Utah on any particular date. The court or other officer shall receive the certificate of authority in lieu of the commissioner's testimony.

(3) (a) On the request of an insurer authorized to do a surety business, the commissioner shall furnish a copy of the insurer's certificate of authority to a designated public officer in this state who requires that certificate of authority before accepting a bond.

(b) The public officer described in Subsection (3)(a) shall file the certificate of authority furnished under Subsection (3)(a).

(c) After a certified copy of a certificate of authority is furnished to a public officer, it is not necessary, while the certificate of authority remains effective, to attach a copy of it to any instrument of suretyship filed with that public officer.

(d) Whenever the commissioner revokes the certificate of authority or begins a proceeding under Chapter 27a, Insurer Receivership Act, against an insurer authorized to do a surety business, the commissioner shall immediately give notice of that action to each public officer who is sent a certified copy under this Subsection (3).

(4) (a) The commissioner shall immediately notify every judge and clerk of the courts of record in the state when:

(i) an authorized insurer doing a surety business:

(A) files a petition for receivership; or

(B) is in receivership; or

(ii) the commissioner has reason to believe that the authorized insurer doing surety business:

(A) is in financial difficulty; or

(B) has unreasonably failed to carry out any of its contracts.

(b) Upon the receipt of the notice required by this Subsection (4), it is the duty of the judges and clerks to notify and require a person that files with the court a bond on which the authorized insurer doing surety business is surety to immediately file a new bond with a new surety.

(5) (a) The commissioner shall report to the Legislature in accordance with Section 63M-1-2505.5 prior to adopting a rule authorized by Subsection (5)(b).

(b) The commissioner shall require an insurer that issues, sells, renews, or offers health insurance coverage in this state to comply with the provisions of PPACA and administrative rules adopted by the commissioner related to regulation of health benefit plans, including:

(i) lifetime and annual limits;

(ii) prohibition of rescissions;

(iii) coverage of preventive health services;

(iv) coverage for a child or dependent;

(v) pre-existing condition coverage for children;

(vi) insurer transparency of consumer information including plan disclosures, uniform coverage documents, and standard definitions;

(vii) premium rate reviews;

(viii) essential health benefits;

(ix) provider choice;

(x) waiting periods;

(xi) appeals processes;

(xii) rating restrictions;

(xiii) uniform applications and notice provisions; and

(xiv) certification and regulation of qualified health plans.

(c) The commissioner shall preserve state control over:

(i) the health insurance market in the state;

(ii) qualified health plans offered in the state; and

(iii) the conduct of navigators, producers, and in-person assisters operating in the state.

(d) If the state enters into an agreement with the United States Department of Health and Human Services in which the state operates health insurance plan management, the commissioner may:

- (i) for fiscal year 2014, hire one temporary and two permanent full-time employees to be funded through the department's existing budget; and
- (ii) for fiscal year 2015, hire two permanent full-time employees funded through the Insurance Department Restricted Account, subject to appropriations from the Legislature and approval by the governor.

Amended by Chapter 341, 2013 General Session

31A-2-213. Immunity.

(1) (a) In the absence of actual malice, a person listed in Subsection (1)(b) is not subject to any civil liability for any cause of action arising out of any communication, written or oral, made to:

- (i) a law enforcement agency;
- (ii) a governmental authority; or
- (iii) the National Association of Insurance Commissioners.

(b) This section applies to:

- (i) the commissioner;
- (ii) an authorized representative of the commissioner;
- (iii) an examiner appointed by the commissioner; or
- (iv) any employee of the department.

(2) This section is not intended to abrogate or modify in any way any common-law or statutory privilege or immunity enjoyed by any person.

Amended by Chapter 320, 2006 General Session

31A-2-214. Market assistance programs -- Joint underwriting associations.

(1) (a) The commissioner may by rule implement a market assistance program whereby all licensed insurers and producers may pool their information as to the available markets if the commissioner finds that in any part of this state:

- (i) a line of insurance:
 - (A) is not generally available in the marketplace; or
 - (B) is priced in such a manner as to severely limit its availability; and
- (ii) the public interest requires availability of the line of insurance described in Subsection (1)(a)(i).

(b) Insurers doing business in this state may, at their own instance or at the request of the commissioner, prepare and submit to the commissioner, for the commissioner's approval and adoption, voluntary plans providing any line of insurance coverage for all or any part of this state in which:

- (i) the line of insurance:
 - (A) is not generally available in the voluntary market; or
 - (B) is priced in such a manner as to severely limit its availability; and
- (ii) the public interest requires the availability of the coverage described in Subsection (1)(b)(i).

(2) (a) If the commissioner finds after notice and hearing that a market assistance program formed under Subsection (1)(a) or (b) has not met the needs it was intended to address, the commissioner may by rule form a joint underwriting association to make available the insurance to applicants who are in good faith entitled to but unable to procure this insurance through ordinary methods.

(b) The commissioner shall allow any market assistance program formed under Subsection (1)(a) or (b) a minimum of 30 days operation before the commissioner forms a joint underwriting association.

(c) The commissioner may not adopt a rule forming a joint underwriting association under Subsection (2)(a) unless the commissioner finds as a result of the hearing that:

(i) a certain coverage is not available or that the price for that coverage is no longer commensurate with the risk in this state; and

(ii) the coverage is:

(A) vital to the economic health of this state;

(B) vital to the quality of life in this state;

(C) vital in maintaining competition in insurance in this state; or

(D) the number of people affected is significant enough to justify its creation.

(d) The commissioner may not adopt a rule forming a joint underwriting association under Subsection (2)(a) on the basis that:

(i) applicants for particular lines of insurance are unable to pay a premium that is commensurate with the risk involved; or

(ii) the number of applicants or people affected is too small to justify its creation.

(e) Each joint underwriting association formed under Subsection (2)(a) shall require participation by all insurers licensed and engaged in writing that line of insurance or any component of that line of insurance within this state.

(f) Each association formed under Subsection (2)(a) shall:

(i) give consideration to:

(A) the need for adequate and readily accessible coverage;

(B) alternative methods of improving the market affected;

(C) the preference of the insurers and producers;

(D) the inherent limitations of the insurance mechanism;

(E) the need for reasonable underwriting standards; and

(F) the requirement of reasonable loss prevention measures;

(ii) establish procedures that will create minimum interference with the voluntary market;

(iii) allocate the burden imposed by the association equitably and efficiently among the insurers doing business in this state;

(iv) establish procedures for applicants and participants to have grievances reviewed by an impartial body;

(v) provide for the method of classifying risks and making and filing applicable rates; and

(vi) specify:

(A) the basis of participation of insurers and producers in the association;

(B) the conditions under which risks must be accepted; and

(C) the commission rates to be paid for insurance business placed with the

association.

(g) Any deficit in an association in any year shall be recouped by rate increases for the association, applicable prospectively.

(h) Any surplus in excess of the loss reserves of the association in any year shall be distributed either by rate decreases or by distribution to the members of the association on a pro-rata basis.

(3) Notwithstanding Subsection (2), the commissioner may not create a joint underwriting association under Subsection (2) for:

- (a) life insurance;
- (b) annuities;
- (c) accident and health insurance;
- (d) ocean marine insurance;
- (e) medical malpractice insurance;
- (f) earthquake insurance;
- (g) workers' compensation insurance; or
- (h) private passenger automobile liability insurance.

(4) Every insurer and producer participating in a joint underwriting association adopted by the commissioner under Subsection (2) shall provide the services prescribed by the association to any person seeking coverage of the kind available in the plan, including full information about the requirements and procedures for obtaining coverage with the association.

(5) If the commissioner finds that the lack of cooperating insurers or producers in an area makes the functioning of the association difficult, the commissioner may order the association to:

- (a) establish branch service offices;
- (b) make special contracts for provision of the service; or
- (c) take other appropriate steps to ensure that service is available.

(6) (a) The association may issue policies for a period of one year.

(b) If, at the end of any one year period, the commissioner determines that the market conditions justify the continued existence of the association, the commissioner may reauthorize its existence.

(c) In reauthorizing the association in accordance with this Subsection (6), the commissioner shall follow the procedure set forth in Subsection (2).

Amended by Chapter 298, 2003 General Session

31A-2-215. Consumer education.

(1) In furtherance of the purposes in Section 31A-1-102, the commissioner may educate consumers about insurance and provide consumer assistance.

(2) Consumer education may include:

- (a) outreach activities; and
- (b) the production or collection and dissemination of educational materials.

(3) (a) Consumer assistance may include explaining:

- (i) the terms of a policy;
- (ii) a policy's complaint, grievance, or adverse benefit determination procedure;

and

- (iii) the fundamentals of self-advocacy.
- (b) Notwithstanding Subsection (3)(a), consumer assistance may not include testifying or representing a consumer in any grievance or adverse benefit determination, arbitration, judicial, or related proceeding, unless the proceeding is in connection with an enforcement action brought under Section 31A-2-308.
- (4) The commissioner may adopt rules necessary to implement the requirements of this section.

Amended by Chapter 308, 2002 General Session

31A-2-216. Office of Consumer Health Assistance.

- (1) The commissioner shall establish:
 - (a) an Office of Consumer Health Assistance before July 1, 1999; and
 - (b) a committee to advise the commissioner on consumer assistance rendered under this section.
- (2) The office shall:
 - (a) be a resource for health care consumers concerning health care coverage or the need for such coverage;
 - (b) help health care consumers understand:
 - (i) contractual rights and responsibilities;
 - (ii) statutory protections; and
 - (iii) available remedies;
 - (c) educate health care consumers:
 - (i) by producing or collecting and disseminating educational materials to consumers, health insurers, and health benefit plans; and
 - (ii) through outreach and other educational activities;
 - (d) for health care consumers that have difficulty in accessing their health insurance policies because of language, disability, age, or ethnicity, provide services, directly or through referral, such as:
 - (i) information and referral; and
 - (ii) adverse benefit determination process initiation;
 - (e) analyze and monitor federal and state consumer health-related statutes, rules, and regulations; and
 - (f) summarize information gathered under this section and make the summaries available to the public, government agencies, and the Legislature.
- (3) The office may:
 - (a) obtain data from health care consumers as necessary to further the office's duties under this section;
 - (b) investigate complaints and attempt to resolve complaints at the lowest possible level; and
 - (c) assist, but not testify or represent, a consumer in an adverse benefit determination, arbitration, judicial, or related proceeding, unless the proceeding is in connection with an enforcement action brought under Section 31A-2-308.
- (4) The commissioner may adopt rules necessary to implement the requirements of this section.

Amended by Chapter 308, 2002 General Session

31A-2-217. Coordination with other states.

(1) (a) Subject to Subsection (1)(b), the commissioner, by rule, may adopt one or more agreements with a state governmental regulatory agency, within and outside of this state, or with the National Association of Insurance Commissioners to address state regulatory issues limited to:

- (i) licensing of insurance companies;
- (ii) licensing of agents;
- (iii) regulation of premium rates and policy forms; and
- (iv) regulation of insurer insolvency and insurance receiverships.

(b) An agreement described in Subsection (1)(a), may authorize the commissioner to modify a requirement of this title if the commissioner determines that the requirements under the agreement provide protections similar to or greater than the requirements under this title.

(2) (a) The commissioner may negotiate an interstate compact that addresses issuing certificates of authority, if the commissioner determines that:

- (i) each state participating in the compact has requirements for issuing certificates of authority that provide protections similar to or greater than the requirements of this title; or
- (ii) the interstate compact contains requirements for issuing certificates of authority that provide protections similar to or greater than the requirements of this title.

(b) If an interstate compact described in Subsection (2)(a) is adopted by the Legislature, the commissioner may issue certificates of authority to insurers in accordance with the terms of the interstate compact.

(3) If any provision of this title conflicts with a provision of the annual statement instructions or the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, the commissioner may, by rule, resolve the conflict in favor of the annual statement instructions or the National Association of Insurance Commissioners Accounting Practices and Procedures Manual.

(4) The commissioner may, by rule, accept the information prescribed by the National Association of Insurance Commissioners instead of the documents required to be filed with an application for a certificate of authority under:

- (a) Section 31A-4-103, 31A-5-204, 31A-8-205, or 31A-14-201; or
 - (b) rules made by the commissioner.
- (5) This section shall be repealed in accordance with Section 63I-1-231.

Amended by Chapter 43, 2013 General Session

Amended by Chapter 319, 2013 General Session

31A-2-218. Strategic plan for health system reform.

The commissioner and the department shall:

(1) work with the Governor's Office of Economic Development, the Department of Health, the Department of Workforce Services, and the Legislature to develop health system reform in accordance with the strategic plan described in Title 63M, Chapter 1, Part 25, Health System Reform Act;

(2) work with health insurers in accordance with Section 31A-22-635 to develop standards for health insurance applications and compatible electronic systems;

(3) facilitate a private sector method for the collection of health insurance premium payments made for a single policy by multiple payers, including the policyholder, one or more employers of one or more individuals covered by the policy, government programs, and others by educating employers and insurers about collection services available through private vendors, including financial institutions;

(4) encourage health insurers to develop products that:

(a) encourage health care providers to follow best practice protocols;

(b) incorporate other health care quality improvement mechanisms; and

(c) incorporate rewards and incentives for healthy lifestyles and behaviors as permitted by the Health Insurance Portability and Accountability Act;

(5) involve the Office of Consumer Health Assistance created in Section 31A-2-216, as necessary, to accomplish the requirements of this section; and

(6) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules, as necessary, to implement Subsections (2), (3), and (4).

Enacted by Chapter 383, 2008 General Session

31A-2-301. Special hearing officers -- Witness and mileage fees.

(1) If the commissioner considers it necessary because of the technicality or complexity of the subject, the commissioner may appoint a special hearing officer from outside the department staff and may contract for a reasonable professional fee for the services.

(2) (a) In hearings before the commissioner, witness fees and reimbursement for mileage traveled, if claimed, shall be allowed at the same rate as in district courts.

(b) Witness fees and reimbursement for mileage, together with the actual expense necessarily incurred in securing attendance of witnesses and their testimony, and the hearing officer's fee and reasonable actual expenses, shall be paid by the Insurance Department.

(c) The commissioner shall be reimbursed for these costs as provided in Section 31A-2-205 if:

(i) the hearing is incident to an examination for which costs are payable under Section 31A-2-205; or

(ii) the commissioner orders the persons involved in the hearing to reimburse the department for hearing costs, which the commissioner may do if the commissioner had reasonable cause to believe that the order which issued or might have issued was necessary.

(3) Whenever the commissioner is reimbursed for costs under this section, the expenditures may not be charged against the department budget.

Amended by Chapter 297, 2011 General Session

31A-2-302. Commissioner's disapproval.

(1) When the law requires the commissioner's approval for a certain action without a deemer clause, that approval shall be express. The commissioner's

disapproval of an action is assumed if the commissioner does not act within 60 days after receiving the application for approval or give notice of the commissioner's reasonable extension of that time period with the commissioner's reasons for the extension. Assumed disapproval under this subsection entitles the aggrieved person to request agency action under Section 63G-4-201.

(2) When the law provides that a certain action is not effective if disapproved by the commissioner within a certain period, the affirmative approval by the commissioner may make the action effective at a designated earlier date, but not earlier than the date of the commissioner's affirmative approval.

(3) Subsections (1) and (2) do not apply to the extent that the law specifically provides otherwise.

Amended by Chapter 297, 2011 General Session

31A-2-303. Notice.

(1) If the commissioner determines that the number of persons affected by a proposed action is so great as to render it impracticable to serve each person affected with a copy of an order, notice of hearing, or other notice, the commissioner shall:

(a) provide a copy of the order, notice of hearing, or other notice to all persons who have filed with the department a general request to be informed of this type of action, or if fewer than 10 persons have requested this type of notice, provide a copy to those who have and also to others affected by the notice or order so that at least 10 persons receive the notice or order who are collectively representative of the class of persons whose legal status, pecuniary interests, or other substantial interests will be affected by the proposed action; and

(b) publish a copy of the order, notice of hearing, or other notice under Subsection (2).

(2) When this title requires the commissioner to publish an order, notice of hearing, or other document, the commissioner shall cause the notice or order to be published:

(a) at least once during each of the four weeks preceding the hearing, effective date, or other critical event, in at least two newspapers with sufficient circulation and appropriate location to best provide actual notice; and

(b) in accordance with Section 45-1-101 for four weeks preceding the hearing, effective date, or other critical event.

Amended by Chapter 388, 2009 General Session

31A-2-304. Auxiliary procedural powers.

The commissioner, or his delegate authorized for a particular matter over his handwritten signature, may administer oaths, take testimony, issue subpoenas, and take depositions in connection with any hearing, meeting, examination, investigation, or other proceeding that the commissioner may conduct. The subpoena shall have the same effect and shall be served in the same manner as if issued from a court of record. Sections 78B-1-131 and 78B-6-313 apply to the enforcement of the process issued by the commissioner or his delegate.

Amended by Chapter 3, 2008 General Session

31A-2-305. Immunity from prosecution.

(1) If a natural person declines to appear, testify, or produce any record or document in any proceeding instituted by the commissioner or in obedience to the subpoena of the commissioner, the commissioner may apply to a judge of the district court where the proceeding is held for an order to the person to attend, testify, or produce records or documents as requested by the commissioner. In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

(2) If a person claims the privilege against self-incrimination and refuses to appear, testify, or produce documents in response to probative evidence against him in a proceeding to revoke or suspend his license, and if the testimony or documents would have been admissible as evidence in a court of law except for the Fifth Amendment privilege, the refusal to appear, testify, or produce documents is, for noncriminal proceedings only, rebuttable evidence of the facts on which the proceeding is based.

Amended by Chapter 296, 1997 General Session

31A-2-306. Judicial review -- Costs.

(1) A person aggrieved by a rule or order of the commissioner, or aggrieved by the commissioner's failure to act when he has a duty to act, may obtain judicial review.

(2) The court reviewing agency actions governed by this title shall give priority to those actions and shall hear and determine them promptly.

(3) Costs shall be awarded as in civil cases. If the court finds that the appeal from action or inaction stemmed from the bad faith or malice of the commissioner, the court may award reasonable attorney's fees to the prevailing petitioner. Section 63G-7-701 applies to the extent the attorney's fees awarded under this subsection exceed \$10,000 for any one appeal.

Amended by Chapter 267, 2004 General Session

31A-2-306.5. Stay of commissioner's decision pending administrative review or judicial appeal.

(1) An order of the commissioner or a designee of the commissioner is not stayed by a petition for:

- (a) administrative review;
- (b) rehearing; or
- (c) judicial review.

(2) A person seeking to stay an order of the commissioner or a designee of the commissioner shall seek a stay in accordance with:

(a) rules made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, pending a petition for:

- (i) administrative review; or
- (ii) rehearing; or

(b) Section 63G-4-405, pending judicial review.

Amended by Chapter 382, 2008 General Session

31A-2-307. Declaratory interpretation of statutes -- Procedure.

(1) The commissioner or any other person with a substantial interest in the result may petition the Third District Court for Salt Lake County for a declaratory judgment interpreting any provision of this title as applied to stipulated facts.

(2) The court may require that notice be given to persons that may be affected by the judgment. These persons may participate in the proceeding.

(3) The court in its discretion may require the commissioner and any other participating parties to provide testimony and documentary evidence necessary for a fair disposition of the case.

(4) The court may decline to proceed on the petition if it believes the petition is frivolous, or the declaratory relief is unnecessary or has the possibility of prejudicing persons who cannot practicably be made parties to the proceeding.

(5) The court may declare the meaning of the statute. The declaration has the effect of a final judgment or decree.

(6) Any participating party may obtain judicial review of the decision.

(7) The costs of the proceeding shall be paid by the petitioner unless the commissioner is the petitioner, in which case all parties shall bear their own costs.

"Costs" means:

(a) fees of the clerk and marshal;

(b) fees of the court reporter or the transcriber of a tape of the proceedings for all or any part of the transcript necessarily obtained for use in the case;

(c) fees and disbursements for printing and witnesses;

(d) fees for exemplification and copies of papers necessarily obtained for use in the case; and

(e) compensation of court-appointed experts or interpreters. Reimbursements shall be made to the General Fund, and shall be added back to the department's budget, except to the extent the department forwards a reimbursement to the attorney general's office, in which case the attorney general's budget shall be credited with the reimbursement.

Amended by Chapter 101, 1988 General Session

31A-2-308. Enforcement penalties and procedures.

(1) (a) A person who violates any insurance statute or rule or any order issued under Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

(b) (i) The commissioner may order an individual producer, surplus line producer, limited line producer, managing general agent, reinsurance intermediary, adjuster, or insurance consultant who violates an insurance statute or rule to forfeit to the state not more than \$2,500 for each violation.

(ii) The commissioner may order any other person who violates an insurance statute or rule to forfeit to the state not more than \$5,000 for each violation.

(c) (i) The commissioner may order an individual producer, surplus line producer, limited line producer, managing general agent, reinsurance intermediary, adjuster, or insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$2,500 for each violation. Each day the violation continues is a separate violation.

(ii) The commissioner may order any other person who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each day the violation continues is a separate violation.

(d) The commissioner may accept or compromise any forfeiture under this Subsection (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only the attorney general may compromise the forfeiture.

(2) When a person fails to comply with an order issued under Subsection 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of competent jurisdiction or obtain a court order or judgment:

(a) enforcing the commissioner's order;

(b) (i) directing compliance with the commissioner's order and restraining further violation of the order; and

(ii) subjecting the person ordered to the procedures and sanctions available to the court for punishing contempt if the failure to comply continues; or

(c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each day the failure to comply continues after the filing of the complaint until judgment is rendered.

(3) (a) The Utah Rules of Civil Procedure govern actions brought under Subsection (2), except that the commissioner may file a complaint seeking a court-ordered forfeiture under Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's intention to proceed under Subsection (2)(c).

(b) The commissioner's order issued under Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.

(4) If, after a court order is issued under Subsection (2), the person fails to comply with the commissioner's order or judgment:

(a) the commissioner may certify the fact of the failure to the court by affidavit; and

(b) the court may, after a hearing following at least five days written notice to the parties subject to the order or judgment, amend the order or judgment to add the forfeiture or forfeitures, as prescribed in Subsection (2)(c), until the person complies.

(5) (a) The proceeds of the forfeitures under this section, including collection expenses, shall be paid into the General Fund.

(b) The expenses of collection shall be credited to the department's budget.

(c) The attorney general's budget shall be credited to the extent the department reimburses the attorney general's office for its collection expenses under this section.

(6) (a) Forfeitures and judgments under this section bear interest at the rate charged by the United States Internal Revenue Service for past due taxes on the:

(i) date of entry of the commissioner's order under Subsection (1); or

(ii) date of judgment under Subsection (2).

(b) Interest accrues from the later of the dates described in Subsection (6)(a)

until the forfeiture and accrued interest are fully paid.

(7) A forfeiture may not be imposed under Subsection (2)(c) if:

(a) at the time the forfeiture action is commenced, the person was in compliance with the commissioner's order; or

(b) the violation of the order occurred during the order's suspension.

(8) The commissioner may seek an injunction as an alternative to issuing an order under Subsection 31A-2-201(4).

(9) (a) A person is guilty of a class B misdemeanor if that person:

(i) intentionally violates:

(A) an insurance statute of this state; or

(B) an order issued under Subsection 31A-2-201(4);

(ii) intentionally permits a person over whom that person has authority to violate:

(A) an insurance statute of this state; or

(B) an order issued under Subsection 31A-2-201(4); or

(iii) intentionally aids any person in violating:

(A) an insurance statute of this state; or

(B) an order issued under Subsection 31A-2-201(4).

(b) Unless a specific criminal penalty is provided elsewhere in this title, the person may be fined not more than:

(i) \$10,000 if a corporation; or

(ii) \$5,000 if a person other than a corporation.

(c) If the person is an individual, the person may, in addition, be imprisoned for up to one year.

(d) As used in this Subsection (9), "intentionally" has the same meaning as under Subsection 76-2-103(1).

(10) (a) A person who knowingly and intentionally violates Section 31A-4-102, 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this Subsection (10).

(b) When the value of the property, money, or other things obtained or sought to be obtained in violation of Subsection (10)(a):

(i) is less than \$5,000, a person is guilty of a third degree felony; or

(ii) is or exceeds \$5,000, a person is guilty of a second degree felony.

(11) (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of authority:

(i) when a licensee of the department, other than a domestic insurer:

(A) persistently or substantially violates the insurance law; or

(B) violates an order of the commissioner under Subsection 31A-2-201(4);

(ii) if there are grounds for delinquency proceedings against the licensee under Section 31A-27a-207; or

(iii) if the licensee's methods and practices in the conduct of the licensee's business endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate interests of the licensee's customers and the public.

(b) Additional license termination or probation provisions for licensees other than insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112, 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and

31A-35-503.

(12) The enforcement penalties and procedures set forth in this section are not exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to applicable law.

Amended by Chapter 253, 2012 General Session

31A-2-309. Service of process through state officer.

(1) The commissioner, or the lieutenant governor when the subject proceeding is brought by the state, is the agent for receipt of service of a summons, notice, order, pleading, or other legal process relating to a Utah court or administrative agency upon the following:

(a) an insurer authorized to do business in this state, while authorized to do business in this state, and thereafter in a proceeding arising from or related to a transaction having a connection with this state;

(b) a surplus lines insurer for a proceeding arising out of a contract of insurance that is subject to the surplus lines law, or out of a certificate, cover note, or other confirmation of that type of insurance;

(c) an unauthorized insurer or other person assisting an unauthorized insurer under Subsection 31A-15-102(1) by doing an act specified in Subsection 31A-15-102(2), for a proceeding arising out of a transaction that is subject to the unauthorized insurance law;

(d) a nonresident producer, consultant, adjuster, or third party administrator, while authorized to do business in this state, and thereafter in a proceeding arising from or related to a transaction having a connection with this state; and

(e) a reinsurer submitting to the commissioner's jurisdiction under Subsection 31A-17-404(8).

(2) The following is considered to have irrevocably appointed the commissioner and lieutenant governor as that person's agents in accordance with Subsection (1):

(a) a licensed insurer by applying for and receiving a certificate of authority;

(b) a surplus lines insurer by entering into a contract subject to the surplus lines law;

(c) an unauthorized insurer by doing in this state an act prohibited by Section 31A-15-103; and

(d) a nonresident producer, consultant, adjuster, and third party administrator.

(3) The commissioner and lieutenant governor are also agents for an executor, administrator, personal representative, receiver, trustee, or other successor in interest of a person specified under Subsection (1).

(4) A litigant serving process on the commissioner or lieutenant governor under this section shall pay the fee applicable under Section 31A-3-103.

(5) The right to substituted service under this section does not limit the right to serve a summons, notice, order, pleading, demand, or other process upon a person in another manner provided by law.

Amended by Chapter 257, 2008 General Session

31A-2-310. Procedure for service of process through state officer.

(1) Service upon the commissioner or lieutenant governor under Section 31A-2-309 is service on the principal, if:

(a) two copies of the process are delivered personally or to the office of the official designated in Section 31A-2-309, and

(b) that official mails a copy of the process to the person to be served according to Subsection (2)(b).

(2) (a) The commissioner and the lieutenant governor shall give receipts for and keep records of all process served through them.

(b) The commissioner or the lieutenant governor shall immediately send by certified mail one copy of the process received to the person to be served at that person's last known principal place of business, residence, or post-office address. The commissioner or the lieutenant governor shall retain the other copy for his files.

(c) No plaintiff or complainant may take a judgment by default in any proceeding in which process is served under this section and Section 31A-2-309 until the expiration of 40 days from the date of service of process under Subsection (2)(b).

(3) Proof of service shall be evidenced by a certificate by the official designated in Section 31A-2-309, showing service made upon him and mailing by him, and attached to a copy of the process presented to him for that purpose.

(4) When process is served under this section, the words "twenty days" in the first sentence of Rule 12(a) of the Utah Rules of Civil Procedure shall be changed to read "forty days."

Amended by Chapter 20, 1995 General Session

31A-2-311. Reciprocal enforcement of foreign decrees.

(1) As used in this section:

(a) "Reciprocal state" means a state whose laws contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders issued by courts located in other states against an insurer authorized to do business in the reciprocal state, and which recognizes Utah as a reciprocal state under its law.

(b) "Foreign decree" means a decree or order of a court located in a reciprocal state, including a United States court located in a reciprocal state against an insurer authorized to do business in Utah.

(2) The commissioner shall determine which states qualify as reciprocal states and shall maintain a list of them.

(3) The attorney general, upon request of the commissioner, may proceed in the courts of Utah or any other state to enforce an order or decision issued in Utah in any court proceeding or in any administrative proceeding before the insurance commissioner.

(4) (a) A copy of any foreign court decree authenticated under Utah statutes or court rules may be filed in the office of the clerk of the Third District Court for Salt Lake County. The clerk, upon verifying with the commissioner that the decree or order qualifies as a foreign court decree, shall treat it in the same manner and give it the same effect as a decree of a district court of Utah.

(b) (i) When filing the foreign decree, the filer shall deposit with the clerk of the court an affidavit setting forth the name and last-known post-office address of the defendant in Utah.

(ii) When the foreign decree and the affidavit are filed, the clerk shall immediately mail notice of the filing of the foreign decree to the defendant at the address given by the filer and to the commissioner, and shall note the mailing in the docket. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the commissioner. Alternatively, the commissioner may mail a notice of the filing of the foreign decree to the defendant, and either the attorney general or the commissioner may file proof of this mailing with the clerk. The clerk's failure to mail notice of the filing does not affect the enforcement proceedings if the attorney general or the commissioner has filed a proof of mailing.

(iii) No execution or other process for enforcement of a foreign decree may issue until 30 days after the foreign decree is filed.

(c) (i) If the defendant shows the court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof by the defendant that he has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(ii) If the defendant shows the court any ground upon which enforcement of a similar decree of any district court of Utah would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon proof by the defendant that he has furnished the same security for satisfaction of the decree as is required in Utah.

(d) A person filing a foreign decree shall pay to the clerk of the court the same fee for an enforcement proceeding as is required for enforcing a decree of the district court.

Enacted by Chapter 242, 1985 General Session

31A-2-401. Title.

This part is known as the "Title and Escrow Commission Act."

Enacted by Chapter 185, 2005 General Session

31A-2-402. Definitions.

As used in this part:

(1) "Commission" means the Title and Escrow Commission created in Section 31A-2-403.

(2) "Concurrence" means the entities given a concurring role must jointly agree for the action to be taken.

(3) "Dual licensed title licensee" means a title licensee who holds:

(a) an individual title insurance producer license as a title licensee; and

(b) a license or certificate under:

(i) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

- (ii) Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or
- (iii) Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act.
- (4) "Real Estate Commission" means the Real Estate Commission created in Section 61-2f-103.
- (5) "Title licensee" means a person licensed under this title as:
 - (a) an agency title insurance producer with a title insurance line of authority;
 - (b) an individual title insurance producer with:
 - (i) a general title insurance line of authority; or
 - (ii) a specific category of authority for title insurance; or
 - (c) a title insurance adjuster.

Amended by Chapter 319, 2013 General Session

31A-2-403. Title and Escrow Commission created.

(1) (a) Subject to Subsection (1)(b), there is created within the department the Title and Escrow Commission that is comprised of five members appointed by the governor with the consent of the Senate as follows beginning July 1, 2013:

- (i) two members shall be employees of a title insurer;
- (ii) two members shall:
 - (A) be employees of a Utah agency title insurance producer;
 - (B) be or have been licensed under the title insurance line of authority;
 - (C) as of the day on which the member is appointed, be or have been licensed with the search or escrow subline of authority for at least five years; and
 - (D) as of the day on which the member is appointed, not be from the same county as another member appointed under this Subsection (1)(a)(ii); and
- (iii) one member shall be a member of the general public from any county in the state.

(b) No more than one commission member may be appointed from a single company or an affiliate or subsidiary of the company.

(2) (a) Subject to Subsection (2)(c), a commission member shall file with the commissioner a disclosure of any position of employment or ownership interest that the commission member has with respect to a person that is subject to the jurisdiction of the commissioner.

- (b) The disclosure statement required by this Subsection (2) shall be:
 - (i) filed by no later than the day on which the person begins that person's appointment; and
 - (ii) amended when a significant change occurs in any matter required to be disclosed under this Subsection (2).

(c) A commission member is not required to disclose an ownership interest that the commission member has if the ownership interest is in a publicly traded company or held as part of a mutual fund, trust, or similar investment.

(3) (a) Except as required by Subsection (3)(b), as terms of current commission members expire, the governor shall appoint each new commission member to a four-year term ending on June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment, adjust the length of terms to ensure that the terms of the

commission members are staggered so that approximately half of the members appointed under Subsection (1)(a)(i) and half of the members appointed under Subsection (1)(a)(ii) are appointed every two years.

(c) A commission member may not serve more than one consecutive term.

(d) When a vacancy occurs in the membership for any reason, the governor, with the consent of the Senate, shall appoint a replacement for the unexpired term.

(e) Notwithstanding the other provisions of this Subsection (3), a commission member serves until a successor is appointed by the governor with the consent of the Senate.

(4) A commission member may not receive compensation or benefits for the commission member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) Members of the commission shall annually select one commission member to serve as chair.

(6) (a) The commission shall meet at least monthly. Notwithstanding Section 52-4-207, a commission member shall physically attend a regularly scheduled monthly meeting of the commission and may not attend through electronic means. A commission member may attend subcommittee meetings, emergency meetings, or other not regularly scheduled meetings electronically in accordance with Section 52-4-207.

(b) The commissioner may call additional meetings:

(i) at the commissioner's discretion;

(ii) upon the request of the chair of the commission; or

(iii) upon the written request of three or more commission members.

(c) (i) Three commission members constitute a quorum for the transaction of business.

(ii) The action of a majority of the commission members when a quorum is present is the action of the commission.

(7) The commissioner shall staff the commission.

Amended by Chapter 319, 2013 General Session

31A-2-404. Duties of the commissioner and Title and Escrow Commission.

(1) Notwithstanding the other provisions of this chapter, to the extent provided in this part, the commissioner shall administer and enforce the provisions in this title related to:

(a) title insurance; and

(b) escrow conducted by a title licensee or title insurer.

(2) The commission shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to Subsection (4), make rules for the administration of the provisions in this title related to title insurance including rules related to:

- (i) rating standards and rating methods for a title licensee, as provided in Section 31A-19a-209;
- (ii) the licensing for a title licensee, including the licensing requirements of Section 31A-23a-204;
- (iii) continuing education requirements of Section 31A-23a-202; and
- (iv) standards of conduct for a title licensee;
- (b) concur in the issuance and renewal of a license in accordance with Section 31A-23a-105 or 31A-26-203;
- (c) in accordance with Section 31A-3-103, establish, with the concurrence of the commissioner, the fees imposed by this title on a title licensee;
- (d) in accordance with Section 31A-23a-415 determine, after consulting with the commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;
- (e) conduct an administrative hearing not delegated by the commission to an administrative law judge related to the:
 - (i) licensing of an applicant;
 - (ii) conduct of a title licensee; or
 - (iii) approval of a continuing education program required by Section 31A-23a-202;
- (f) with the concurrence of the commissioner, approve a continuing education program required by Section 31A-23a-202;
- (g) with the concurrence of the commissioner, impose a penalty:
 - (i) under this title related to:
 - (A) title insurance; or
 - (B) escrow conducted by a title licensee;
 - (ii) after investigation by the commissioner in accordance with Part 3, Procedures and Enforcement; and
 - (iii) that is enforced by the commissioner;
- (h) advise the commissioner on the administration and enforcement of any matter affecting the title insurance industry;
- (i) advise the commissioner on matters affecting the commissioner's budget related to title insurance; and
- (j) perform other duties as provided in this title.
- (3) The commission may make rules establishing an examination for a license that will satisfy Section 31A-23a-204:
 - (a) after consultation with the commissioner and the commissioner's test administrator;
 - (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (c) subject to Subsection (4).
- (4) The commission may make a rule under this title only if at the time the commission files its proposed rule and rule analysis with the Division of Administrative Rules in accordance with Section 63G-3-301, the commission provides the Real Estate Commission that same information.
- (5) (a) The commissioner shall annually report the information described in Subsection (5)(b) in writing to the commission.
- (b) The information required to be reported under this Subsection (5):

- (i) may not identify a person; and
- (ii) shall include:
 - (A) the number of complaints the commissioner receives with regard to transactions involving title insurance or a title licensee during the calendar year immediately preceding the report;
 - (B) the type of complaints described in Subsection (5)(b)(ii)(A); and
 - (C) for each complaint described in Subsection (5)(b)(ii)(A):
 - (I) any action taken by the commissioner with regard to the complaint; and
 - (II) the time-period beginning the day on which a complaint is made and ending the day on which the commissioner determines it will take no further action with regard to the complaint.
- (6) The commission may not impose a penalty in a manner inconsistent with Subsection (2)(g) or make a rule that conflicts with Subsection (2)(g).

Amended by Chapter 43, 2013 General Session
Amended by Chapter 319, 2013 General Session

31A-2-405. Dual licensing.

- (1) A dual licensed title licensee may provide a title insurance product or service under this title only if before providing that title insurance product or service the dual licensed title licensee obtains approval as provided in this section.
- (2) (a) Except as provided in Subsection (3), a dual licensed title licensee shall obtain approval from the commissioner by filing under penalty of perjury with the department:
 - (i) a statement that includes:
 - (A) a description of the title insurance product or service to be provided;
 - (B) the names of the principals anticipated to be involved in the provision or receipt of the title insurance product or service;
 - (C) a legal description of the property to be involved in the provision or receipt of the title insurance product or service;
 - (D) whether or not the dual licensed title licensee received any consideration from a person described in Subsection (2)(a)(i)(B) within 18 months prior to the day on which the dual licensed title licensee files the statement; and
 - (E) any other information the commission requires by rule made in accordance with this section and Section 31A-2-404; and
 - (ii) the fee applicable under Section 31A-3-103.
- (b) The commissioner shall approve the provision of a title insurance product or service under this section if the commissioner finds that the dual licensed title licensee:
 - (i) completed the filing required by Subsection (2)(a);
 - (ii) is acting in good faith; and
 - (iii) has not received consideration from a person described in Subsection (2)(a)(i)(B) within the 18-month period described in Subsection (2)(a)(i)(D).
- (c) If the commissioner does not deny approval under this section, the commissioner is considered to have approved the provision of the title insurance product or service the earlier of:
 - (i) the day on which the commissioner issues the commissioner's approval in

writing; or

(ii) 15 days after the day on which the dual licensed title licensee completes the filing under Subsection (2)(a).

(3) Notwithstanding Subsection (2), a dual licensed title licensee may obtain approval from the chair of the commission if:

(a) the dual licensed title licensee completes the filing under Subsection (2)(a);

(b) the dual licensed title licensee establishes a need for expedited approval;

and

(c) the chair of the commission issues approval in writing after making the findings described in Subsection (2)(b).

(4) The commissioner shall revoke the license under this title of a dual licensed title licensee if the dual licensed title licensee:

(a) provides a title insurance product or service without the approval required by this section; or

(b) knowingly provides false or misleading information in the statement required by Subsection (2).

(5) The commission may make rules, subject to Section 31A-2-404, to implement the filing requirements under Subsection (2), including the definition of terms.

Enacted by Chapter 325, 2007 General Session